IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23855 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SABERABHAI ALIAS POPETA W/O SIRAJUDDIN ALIAS MUNNA JALAUDDIN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SHAKEEL A QURESHI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 04/09/2006

ORAL JUDGMENT

1. By way of this petition, the petitioner-detenu has prayed for quashing and setting aside the detention order No. PCB/ PASA/ 306/2005 dated 06.10.2005 passed by the Commissioner of Police, Surat in purported exercise of powers under subsection (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as “PASA Act”).

2. The petitioner is alleged to be involved in Criminal

Case No. 148 of 2005 registered on 14.07.2005 before the Chowk Bazar Police Station under Sections 8(c) and 20(b)of the NDPS Act. The petitioner was arrested on the same day and was thereafter released on 13.09.05.

3. Learned counsel for the petitioner submitted that the order of the detaining authority is required to be quashed and set aside on the following grounds:

(i)There is a delay in passing the order of detention which is not explained. The alleged offence is registered on 14.07.2005 whereas the detention order is passed on 06.10.2005. Thus, there is a delay of 2 months and 22 days in passing the order of detention and therefore the same is required to be quashed and set aside.

(ii)The detaining authority while passing the order of detention mainly relied upon the solitary offence registered against the petitioner which is unjust and improper.

4. Learned counsel for the petitioner has relied upon various decisions of the Apex Court and this Court and has submitted that the petition requires to be allowed.

5. Mr I.M Pandya, learned APP appearing for the respondent-State has supported the order of the detaining authority and has submitted that the order was passed in accordance with law and therefore is not required to be quashed and set aside.

6. Heard learned counsel for the respective parties and gone through the materials placed on record including the order of detention. In the case of **Elesh Nandubhai Patel v. Commr of Police, Ahmedabad City reported in 1997(1) GLH 381**, this Court in para 21 as held as under:

> "21. In the instant case, the last registered case is of Mau 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. After a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme court in Anand Prakash v. State of U.P reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli. SCC 61."

6.1 In the case of **Vahidbhai Saiyadbhai Sheikh v. State of Gujarat & Ors reported in 2003(3) GLH 697,** this Court in para 9 of the judgement has held as under:

> "Strikingly, in this case, the authority did not choose even to filed prosecution and the question of detenu being released on bail could be considered when prosecution is filed and some material is placed before the detaining authority that the detenu was likely to be released on bail. The detaining authority, in this case, instead has chosen to rely upon on incident and from the said incident, the detaining authority reached to subjective satisfaction that the detenu was likely to continue his activities in future when there was no material at all on record revealing such repeating tendency on the part of the detenu. The order of detention, therefore, is vitiated by vice of non-application of mind."

6.2 Similar principle is laid down in the cases of Mukhatyarbhai Mohmadbhai Shaikh v. Commr of Police, Ahmedabad City & Ors reported in 36(2) GLR 1464 and A. Pappukhan Nawabkhan Pathan v. S.N Sinha & Ors reported in 1990(2) GLH 375.

7. Learned APP is not able to controvert the aforesaid submissions and decisions more particularly in a case where the allegation is of only one criminal case in which the prosecution is filed and the convict is thereafter released on bail.

8. As a result of hearing and perusal of records, I am of the view that in the matters of detention, prevention is the object and not punishment. Moreover, it is not the free will by which the authority concerned can satisfy itself subjectively, but this satisfaction though subjective, must be derived from objective material. In the present case, the authority has not reached to a conclusion and has not placed any material on record to show that the petitioner is likely to continue the same activity in future.

8.1 Moreover, the delay in filing the prosecution by the authority has not been explained plausibly which also does not make the order of detention quite proximate. In view of fact that the present case is the solitary offence on the part of the detenu, in absence of cogent materials revealing the repeating tendency and explaining the delay caused in filing the prosecution, the order of the detaining authority is vitiated by vice of non-application of mind and therefore the same is required to be quashed and set aside.

9. In the premises aforesaid, the petition is allowed. The detention order No. PCB/ PASA/ 306/2005 dated

06.10.2005 passed by the Commissioner of Police, Surat is quashed and set aside. The petitioner-detenu is directed to be set at liberty forthwith, unless required in connection with any other case. Rule is made absolute. Direct Service is permitted.

(K.S. JHAVERI, J.)

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